EDITOR'S NOTE:

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Supreme Court, U.S.
FILED
DEC 15 1967
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

—o—

IN RE BERNARD H. GOLDSTEIN, Petitioner.

—o—

PETITION FOR WRITS OF MANDAMUS
AND WRITS OF PROHIBITION

—o—

SUPPLEMENTAL BRIEF
AND APPENDIX

— o —

PETITIONS FOR ORIGINAL WRITS OF MANDAMUS AND WRITS OF PROHIBITION VERSUS THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT ET AL

— o —

Daniel B. Blake, III
Attorney for Petitioner
Bernard H. Goldstein
910 17th St, NW., Suite 201
Washington, D.C. 20006
(202) 293-4850
(703) 549-4283

SUPPLEMENTAL BRIEF
AND APPENDIX
INDEX AND TABLE OF
CONTENTS

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Pursuant to to the United States Supreme Court Rules 16.6, 21.1 (k) (iv), 27, and 30, the following is submitted herewith:

A. Court Orders for Case No. 87-281 for Petition for Writ of Certiorari filed on 9/16/87 in the Supreme Court of the United states:

1. The 3/37/87 Decision of the Circuit Court of Appeals for the District of Columbia Circuit (Reported in 815 F 2d 115-123; Also see the Appendix to the 9/16/87 Petition) 1a - 13a

2. The 5/21/87 Denial by the Appellate Court of Petition for Rehearing and Rehearing in Banc (See Appendix attached to the 9/16/87 Petition) 14a - 15a

Page

3. The 11/9/87 Denial by the Supreme Court of the Goldstein Petition for a Writ of Certiorari 16a

4. A 12/12/87 Affidavit Re Sealed Documents, which Affidavit is attached to Petition filed 12/15/87. 17a-23a

B. Court Orders for Case No. 87-0228 (in the District Court) and now on appeal in No. 87-5297 in the Appellate Court. Also document for interrelated and pending Petition for Writ of Mandamus filed in the Appellate Court on 9/2/87. Case No. 87-5384)

1. The 1/30/87 and 2/9/87 Complaints: For a brief summary see: Para. 4b on page 5 of the Madamus Petition dated 12/15/87.

2. The 5/22/87 and 6/12/87 District Orders. 24a-25a

3. The 7/20/87 Notice of Appeal 26a-27a

4. The 9/28/87 Appellate Court Docketing Statement (No. 87-5297) 28a

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5. A 9/2/87 Petition in the Appellate Court for Writs of Mandamus (Case No. 87-5384) 29a-30a

6. A 6/4/87 Affidavit for Recusal of a Judge for Bias and Prejudice under 28 USC 144 31a-36a

C. Reference to Related Briefs and Documents in the Official Files. (See Rule 30 including/ 30.7)

1. Concerning the current Petition for for a Writ for Certiorari in Case No. 87-281.

a. A 11/3/87 Reply Brief.

b. A 11/3/87 Supplemental Brief.

c. A 12/3/ Petition for Rehearing.

d. A 12/15 Petition for a Writ of Mandamus.

2. Concerning the 3/27/87 Appellate Court Decision and Related Rule 60(b) Motion:

a. A 1/31/85 Goldstein Brief.

b. A 5/3/85 " " Brief.

c. A 6/17/85 " " Brief.

d. A 1/10/86 Supplemental Brief.

e. A 1/21/ Citation of Supplemental Authorities.

Daniel B. Blake
Attorney

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-5627

HENRY CRAWFORD, et al.

v.

LA BOUCHERIE BERNARD LTD., et al.

BERNARD H. GOLDSTEIN, et al., APPELLANTS

No. 84-5628

RAYMOND J. DONOVAN, SECRETARY,
U.S. DEPARTMENT OF LABOR

v.

BERNARD H. GOLDSTEIN, et al., APPELLANTS

ROY A. SCHOTLAND, ESQ., RECEIVER,
DISTRICT HOTEL SUPPLY, INC.
PROFIT SHARING PLAN

HENRY CRAWFORD, et al., INTERVENORS

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

No. 84-5770

HENRY CRAWFORD, et al.

v.

LA BOUCHERIE BERNARD LTD., et al.

BERNARD H. GOLDSTEIN, et al., APPELLANTS

No. 84-5771

RAYMOND J. DONOVAN, SECRETARY,
U.S. DEPARTMENT OF LABOR

v.

BERNARD H. GOLDSTEIN, et al., APPELLANTS

ROY A. SCHOTLAND, ESQ., RECEIVER,
DISTRICT HOTEL SUPPLY, INC.
PROFIT SHARING PLAN

No. 84-5946

HENRY CRAWFORD, et al.

v.

LA BOUCHERIE BERNARD LTD., et al.

BERNARD H. GOLDSTEIN, et al., APPELLANTS

No. 84-5947

RAYMOND J. DONOVAN, SECRETARY,
U.S. DEPARTMENT OF LABOR, et al.

v.

BERNARD H. GOLDSTEIN, et al., APPELLANTS

ROY A. SCHOTLAND, ESQ., RECEIVER,
DISTRICT HOTEL SUPPLY, INC.
PROFIT SHARING PLAN

Appeals from the United States District Court
for the District of Columbia
(Civil Action Nos. 83-00780 and 83-00940)

Argued January 17, 1986

Decided March 27, 1987

Daniel B. Blake, III for appellants in Nos. 84-5627, 84-5628, 84-5770, 84-5771, 84-5946 and 84-5947.

William W. Osborne, Jr., with whom *Jonathan G. Axelrod* and *James S. Ray* were on the brief for appellees, Crawford, et al. in Nos. 84-5627, 84-5628, 84-5946 and 84-5947.

Ellen L. Beard, Attorney, Department of Labor, with whom *Thomas L. Holtzman*, Attorney, Department of Labor was on the brief for appellee, Secretary of Labor in Nos. 84-5627, 84-5628, 84-5770, 84-5771, 84-5946 and 84-5947.

Before: MIKVA and BORK, and HAROLD H. GREENE,* *District Judge*.

Opinion for the Court filed by *District Judge* GREENE.

GREENE, *District Judge*: This case presents primarily the question whether, notwithstanding the so-called anti-alienation provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Act authorizes a court to offset a party's interest in a plan covered by that statute against a judgment based on the party's breaches of duty to the same plan. For the reasons discussed below, we conclude that ERISA does allow such an offset.

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* Of the United States District Court for the District of Columbia, sitting by designation pursuant to 28 U.S.C. § 292(a).

I

Appellant Bernard Goldstein, defendant below, was chief executive officer and majority owner of two corporations, La Boucherie Bernard, Ltd., and District Hotel Supply, Inc. Bernard Goldstein was also a participant in and trustee of a profit-sharing plan established for the corporation's employees, the District Hotel Supply, Inc., Profit Sharing Plan. Appellant Jack Goldstein, Bernard's brother, also a defendant below, was an employee of both corporations and a participant and trustee of the Plan.

In 1978, Bernard Goldstein, along with his wife and two children, established a partnership called BRIL Associates for the purpose of purchasing real estate in Virginia on which to build a new company headquarters. On December 14 of that year, BRIL bought real estate in Fairfax County, Virginia, from the Shell Oil Company, the purchase being financed by a first mortgage from Madison National Bank and a second mortgage from Shell Oil.

During the next three years a series of transactions occurred involving the Goldsteins' profit sharing plan and the BRIL property in Fairfax. Details aside, the Goldsteins ultimately transferred some $461,000 in Plan assets to BRIL or for BRIL's benefit. The Goldsteins never repaid this money to the Plan; they made nc agreement to repay the money; and they made no provision to pay interest on the amount so "borrowed."

Between May 1980 and June 1982, the Goldsteins also transferred $163,000 from the Plan to La Boucherie Bernard, a corporation that was predominantly owned by Bernard Goldstein and that was also a Plan sponsor. Additionally, they used Plan assets within that same time period to satisfy a tax obligation of La Boucherie Bernard; declared a contribution to the Plan which was never paid; and engaged in other transactions in violation of their fiduciary duties under ERISA.

Suit was brought by fifteen participants in the Plan,[1] including appellee Crawford, and on January 20, 1984, the District Court granted summary judgment in favor of the Plan against the Goldsteins, upon a finding that the latter had breached their fiduciary duties as Trustees of the Plan and had violated ERISA's prohibited transactions provisions by misusing Plan assets for their own benefit and that of others. *See* ERISA §§ 404(a)(1)(A), (B), and (C), 406(a)(1)(D), and 406(b)(1) and (2), 29 U.S.C. §§ 1104(a)(1)(A), (B), and (C), 1106(a)(1)(D), and 1106(b)(1) and (2) (1982).

The judgment thus entered against Bernard and Jack Goldstein jointly and severally was for $976,822.38, and the judgment against Bernard Goldstein alone for $20,999. On July 6, 1984, when the Goldsteins had failed to pay any of the judgments, the court granted the motion of the Plan participants for equitable enforcement of these judgments, and it ordered the Goldsteins' own beneficial interests in the Plan to be offset and applied to their judgment debts. It is the July 6, 1984 order that is before us on this appeal and, as noted, the issue[2]

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[1] These Plan participants were employees or former employees of Boucherie Bernard.

[2] The Goldsteins also argue somewhat mysteriously that the order was a confiscation of their property in violation of the Fifth Amendment to the United States Constitution, but no authority is cited for this proposition, and it entirely lacks merit. Moreover, since the Goldsteins did not file a timely notice of appeal from the underlying ERISA judgment, we lack jurisdiction to review the merits of the breach of duty issues and will consider only the issue of offset. The District Court's order granting summary judgment to plaintiffs under ERISA, and certifying that judgment as final under Fed. R. Civ. P. 54(b), was issued on January 20, 1984. The corollary judgment was entered on the court's docket sheet on April 10, 1984. The first notice of appeal was not filed until September 4, 1984, nearly five months later.

Under Fed. R. App. P. 4(a)(1) and 28 U.S.C. § 2107, the notice of appeal in a civil case such as this must be filed

here is whether the court had the power to order such an offset.

II

ERISA is a comprehensive remedial statute enacted to:

> protect . . . the interests of participants in employee benefit plans and their beneficiaries . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the federal courts.

ERISA § 2(b), 29 U.S.C. § 1001(b).

Under section 409(a) of the Act, 29 U.S.C. § 1109(a), a person who breaches his fiduciary duties to a pension plan "shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, . . . and shall be subject to such other equitable or remedial relief as the court may deem appropriate." Section 502(a) of the statute, 29 U.S.C. § 1132(a), in turn authorizes the Secretary of Labor and any plan participant, beneficiary, or fiduciary to bring a civil action "for appropriate relief under section [409]" or to obtain an injunction or "other appropriate equitable relief" to redress a fiduciary violation.

As may be deduced from this language, where a party has breached his fiduciary duty, the courts have broad authority under the statute to fashion remedies for re-

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within 60 days after entry of the judgment or order appealed from. While the District Court may extend this filing time for up to 30 days, the Goldsteins never moved for an extension of time, and their notice of appeal was thus late by almost three months. *See Browder* v. *Director, Illinois Dept. of Corrections*, 434 U.S. 257, 264 (1978); *Moorer* v. *Griffin*, 575 F.2d 87 (6th Cir. 1978). Finally, it is clear that, contrary to the Goldsteins' argument, the ERISA judgments were not interlocutory but final since, as the Goldsteins concede in their brief (at 13), the District Court entered final judgment under Rule 54(b).

dressing any breach and for protecting the interests of participants and beneficiaries. *See, e.g., Donovan* v. *Mazzola*, 716 F.2d 1226, 1235 (9th Cir. 1983) (upholding order requiring appellants to post $1 million bond). The legislative history of section 409(a) further underlines what is apparent from the statutory language. Thus, the Report of the Senate Committee on Labor and Public Welfare states that:

> The enforcement provisions have been designed specifically to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations . . . . *The intent of the committee is to provide the full range of legal and equitable remedies available in both state and federal courts* . . . .

S. Rep. No. 93-127, 93d Cong., 1st Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 4838, 4871 (emphasis added). Similarly, Senator Harrison A. Williams, Chairman of the Committee, made clear the congressional direction to the federal courts to draw on principles of traditional trust law, stating that:

> The objectives of these provisions are to make applicable the law of trusts; . . . to establish uniform fiduciary standards to prevent transactions which dissipate or endanger plan assets; and to provide effective remedies for breaches of trust.

120 Cong. Rec. S-15737, Aug. 22, 1974, *reprinted in* 1974 U.S. Code Cong. & Admin. News 5177, 5186; *see also Eaves* v. *Penn*, 587 F.2d 453, 462 (10th Cir. 1978).

Trust law contemplates the use of broad and flexible equitable remedies as means for dealing with breaches of fiduciary duty, and it imposes the obligation upon the courts to use the remedy that is most advantageous to the participants and that will most closely effectuate the purposes of the trust. *Id.*

The District Court's order in this case to offset the Goldsteins' interests in the Plan in satisfaction of their

judgment debt is fully consistent with these principles. When plaintiffs requested such an order, their final judgment against the Goldsteins had already remained unpaid after some six months. In the absence of an offset order, the Receiver of the Plan might well have been obligated to include the Goldsteins in a distribution of Plan assets to all eligible participants, in accordance with the governing Plan documents.[8] Since the Goldsteins held more than sixty per cent of the beneficial interest in the Plan, such a distribution would in effect have further rewarded them for their wrongdoing, and innocent Plan beneficiaries would still not have received their due.

Rather than to allow such an inequity, traditional trust law would clearly support the forfeiture of the beneficial interest of a breaching fiduciary in order to offset the losses suffered by the trust. As one authority on trusts states:

> If a beneficiary is also a trustee of his own trust, acting for himself and others, it is elementary that as trustee he owes the beneficiaries a duty to perform the trust and not to violate it, and that if he steals trust funds, or causes damage to the trust estate in other ways, his share under the trust . . . will be taken by the court in order to make good the loss.

Bogert, *Trusts and Trustees* § 191, at 484 (2d ed. 1979). Professor Scott has reached the same conclusion, stating that:

> [i]f the trustee is also one of the beneficiaries . . . the other beneficiaries can compel him to make good the breach of trust out of his beneficial interest in the trust property. The defaulting trustee-beneficiary

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[8] Such a distribution might have been called for, for example, if the corporate assets had been sold to another corporation. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), requires a fiduciary to act in accordance with the documents and instruments governing the plan to the extent that they are consistent with the provisions of the Act.

> is not entitled to receive his share of the trust property until he has made good the loss which resulted from his breach of trust. The other beneficiaries can insist that his interest be impounded to make good the loss; they are entitled to a charge upon his interest to indemnify them for the loss.

III *Scott on Trusts* § 257, at 2201 (3d ed. 1967).

In short, the offset remedy adopted by the District Court is not only consistent with ERISA's purpose of providing effective remedies for fiduciary breaches, but it is also among the traditional trust principles that Congress intended to be incorporated into the law of employee benefit plans under ERISA.

III

The Goldsteins argue, however, that ERISA's anti-alienation provision calls for a different result. This provision, section 206(d)(1) of the Act, 29 U.S.C. § 1056 (d)(1), mandates that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Moreover, an identical provision in section 401(a)(13) of the Internal Revenue Code of 1954, 26 U.S.C. § 401(a)(13), has been interpreted by the Treasury Department to prohibit not only voluntary assignment and alienation, but also attachment, garnishment, or levy by operation of law. 26 C.F.R. § 1.401(a)-13(b)(1). Indeed, the Secretary of Labor has recognized that most courts have construed section 206(d)(1) to prohibit the garnishment of pension benefits by creditors, and that the legislative history of the statute supports that interpretation. *See, e.g., General Motors Corp.* v. *Buha*, 623 F.2d 455 (6th Cir. 1980) (section 206(d)(1) includes "all encroachments, both voluntary and involuntary").

The anti-alienation rule has not been regarded as immutable, however. For example, various decisions have implied a limited exception to permit the garnishment of plan benefits in order to satisfy family support and

community property obligations contained in divorced decrees. *See, e.g., American Telephone & Telegraph Co.* v. *Merry*, 592 F.2d 118 (2d Cir. 1979), and *Stone* v. *Stone*, 450 F. Supp. 919 (N.D. Cal. 1978), *aff'd*, 632 F.2d 740 (9th Cir. 1980), *cert. denied sub nom. Seafarers International Union, Pacific District—Pacific Maritime Association Pension Plan* v. *Stone*, 453 U.S. 922 (1981).[4]

Similarly, the garnishment of an employee's pension fund interest has been permitted to satisfy liabilities arising from his criminal misconduct toward his employer. *St. Paul Fire and Marine Insurance Co.* v. *Cox*, 752 F.2d 550 (11th Cir. 1985). In that case, the Eleventh Circuit expressly rejected an argument that, since the anti-alienation provision of ERISA prevented assignment of plan funds to individual claimants, they also prevented the fund from garnishing defendant's interest. Said the court: "[t]here is no reason to conclude that ERISA requires the abrogation of the equitable principle that a wrongdoer should not benefit from his misdeeds," and that "[o]f prime importance to the courts in considering implied exceptions to the non-alienation provisions have been the congressional objectives behind ERISA, and the effect of the proposed exceptions on those goals." *Id.* at 552 (citing *American Telephone & Telegraph* v. *Merry*, *supra*, 592 F.2d at 120-25; *Cartledge* v. *Miller*, 457 F. Supp. 1146, 1154-56 (S.D.N.Y. 1978)).

We agree with the Eleventh Circuit. ERISA was established to protect "the continued well-being and security of millions of employees and their dependents" by providing "minimum standards . . . assuring the equi-

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[4] Further, a participant or beneficiary may make voluntary and revocable assignments, totaling not more than ten per cent of future benefit payments, once benefits are in "pay status" and provided that the voluntary assignment is not intended to defray plan costs; and benefits may be pledged as collateral to secure loans from the plan, if the plan so permits. R. Osgood, *The Law of Pensions and Profit Sharing* § 1.9.4 (1984).

table character of [pension fund] plans and their financial soundness." ERISA § 2(a), 29 U.S.C. § 1001(a). Given the fundamental congressional purpose to have the courts apply trust principles to disputes such as this, and given that the law of trusts is grounded in a strong equitable policy not to permit a trustee to benefit from his own breaches, we have no difficulty in concluding that the anti-alienation portion of the statute does not stand in the way of the remedy adopted here. A contrary interpretation would permit trustee wrongdoers to benefit from their misdeeds at the expense of those whom ERISA was designed to protect. Under such a construction, the Goldsteins, who repeatedly and indeed blatantly breached their fiduciary duties to the pension plan they created, would be allowed to evade their court-ordered responsibility to make restitution for the money they wrongfully obtained, and Plan members and their families would have to watch their pension monies once again disappear into the Goldsteins' pockets.

The Goldsteins argue that to allow an offset under the circumstances of this case would frustrate the protective purposes of ERISA's anti-alienation rule.[5] In the first place, an offset here creates no risk of interference with ongoing Plan operations, since the Plan will cease operating in any event. Moreover, the Goldsteins will not be unfairly deprived of anticipated retirement benefits, since the offset operates as if they were receiving the full amount of benefits they would have received had the Plan had not been depleted by their wrongdoing.[6] Finally, as indicated, the purpose of ERISA's anti-alienation provision—to protect plan beneficiaries by ensuring that plan asests are used only for payment of benefits—would be undermined, not advanced, by an interpretation that pro-

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[5] The purpose of that provision is "to protect a person and those dependent on him from the claim of creditors." *Cartledge* v. *Miller*, 457 F. Supp. 1146, 1156 (S.D.N.Y. 1978).

[6] The amount is merely credited against their judgment debt to the Plan.

hibited offset under these circumstances. The broad equitable remedies authorized by ERISA against fiduciaries who wrongfully deplete plan assets to the detriment of beneficiaries can best—perhaps only—be effectuated here by applying the traditional trust remedy of an offset.

IV

[4] On July 6, 1984, the District Court granted summary judgment in favor of the Profit Sharing Plan, under the Racketeer Influenced and Corrupt Organizations (RICO) statute, 18 U.S.C. §§ 1961 *et seq.* (1982), and awarded the Plan treble damages against Bernard Goldstein in the amount of $1,995,642.76. Appellant Bernard Goldstein's challenge to this RICO judgment can be disposed of briefly.

First. Appellant argues that he may not be found liable in a civil RICO action without a prior criminal conviction and a separate racketeering injury (other than an injury flowing from the predicate acts). Suffice it to say that appellant's theory was rejected by the Supreme Court's recent decision in *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479 (1985).[7]

Second. Appellant contends next that the District Court erred by applying findings of fact made under

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[7] The *Sedima* court said that it could:

> find no support in the statute's history, its language, or considerations of policy for a requirement that a private treble damages action under § 1964(c) can proceed only against a defendant who has already been criminally convicted. To the contrary, every indication is that no such requirement exists. Accordingly, the fact that Imrex and the individual defendants have not been convicted under RICO or the federal mail and wire fraud statutes does not bar Sedima's action.

Id. at ——; 105 S. Ct. at 3284. Similarly, the *Sedima* court held that there is no requirement that a private plaintiff establish a distinct "racketeering injury". *Id.* at ——, 105 S. Ct. at 3285.

ERISA to the RICO claim, one that thus arose under a different statute. The foundation for this argument is difficult at best to make out, and even more difficult to accept. Bernard Goldstein admitted to making transfers of Plan assets with full knowledge that those transfers were illegal. Such an admission supports not only a finding of a violation of ERISA duties but also a violation of 18 U.S.C. § 664, the statutory predicate for appellant's RICO violation.[4] That statute prohibits "an intentional breach of special fiduciary duties imposed by other regulatory statutes or governing instruments." The same facts underlie both claims, and the same findings of fact may be applied to both.

Third. Appellant also argues that summary judgment was improperly granted because he was denied a jury trial on the issue of intent. This argument is equally meritless. Although state of mind is usually a question for the jury, this does not preclude a court from finding intent, on summary judgment, where that intent "may be inferred from objective facts." *See, e.g., Washington Post Co.* v. *Keogh*, 365 F.2d 965, 967-68 (D.C. Cir. 1966), *cert. denied*, 385 U.S. 1011 (1967).

Fourth, appellant challenges the District Court's determination of liability, which included a trebling of damages, to over $1.9 million, pursuant to RICO. Appellant asserts that, in fact, he owes only $50,000, and he claims that an award above that amount constituted an abuse of discretion. No support or justification whatever are offered for this bare conclusory statement. In sum, the District Court's application of RICO was proper in all respects.

For the reasons stated, the judgment of the District Court is

Affirmed.

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[4] RICO, at 18 U.S.C. § 1961(1), defines "racketeering activity" as the commission of one of 41 federal and state crimes, including embezzlement from pension and welfare funds under 18 U.S.C. § 664.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMIBA CIRCUIT

—o—

No. 84-5627 September Term, 19
CA No. 83-00780

Henry Crawford, et. al.

v.

La Boucherie Bernard Ltd., et. al.

United States Court of Appeals
For The District of Columbia Circuit

FILED MAY 21 1987

GEORGE A. FISHER
CLERK

And Consolidated Case Nos. 84-5628
84-5770, 84-5771, 84-5946, 84-5947.

BEFORE: MIKVA and BORK, Circuit Judges; HAROLD GREENE*, District Judge, U.S. District Court for the District of Columbia

O R D E R

Upon consideration of petitioners' petition for rehearing, it is ORDERED, by the Court, that the petition is denied.

PER CURIAM
GEORGE A. FISHER, CLERK

BY: /s/
Robert A. Bonner
Deputy Clerk

* Sitting by designation purusant to 28 U.S.C. Section 292(a).

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 19 86

o

CA No. 83-00780

NO. 84-5627

United States Court of Appeals
For The District of Columbia Circuit

Henry Crawford, et. al.

FILED MAY 21 1987

GEORGE A. FISHER
CLERK

v.

La Boucherie Bernard Ltd., et. al.

o

And Consolidated Case Nos. 84-5628, 84-5770, 84-5771, 84-5946, 84-5947.

BEFORE: Wald, Chief Judge; Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams and D. H. Ginsburg, Circuit Judges; Harold Greene*, District Judge, U.S. District Court for the District of Columbia

O R D E R

Petitioners' suggestion for rehearing en banc has been transmited to the full court. No member of the court requested the taking of a vote thereon. Upon consideration of the foregoing, it is

ORDERED, by the Court en banc, that the suggestion is denied.

PER CURIAM,

FOR THE COURT;
GEORGE A. FISHER, CLERK

Appendix C

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

November 9, 1987

Mr. Daniel B. Blake III
Suite 201
910 17th Street, N. W.
Washington, DC 20006

Re: Bernard H. Goldstein,
v. Henry Crawford, et al.
No. 87-281

Dear Mr. Blake:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk

Joseph F. Spaniol, Jr.

PUBLISHER'S NOTE:

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING:

17A - 23A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BERNARD H. GOLDSTEIN, Plaintiff, v. ROY A. SCHOTLAND, et al., Defendants.

Civil Action No. 87-0228

FILED
MAY 26 1987
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

ORDER

Upon consideration of defendants' several motions to dismiss the complaint, plaintiff's opposition thereto, and the proceedings thereon in open court, it appearing that plaintiff has failed to show sufficient cause why the action should not be dismissed as to all defendants for failure of subject matter jurisdiction, in that plaintiff no longer has an interest in the real property which is the subject matter hereof and, thus, lacks standing to maintain the action, it is, this 22nd day of May, 1987,

ORDERED, that defendants' motions to dismiss are granted, and the complaint is dismissed with prejudice.

27 (N)

Thomas Penfield Jackson
U.S. District Judge

* * *

FILED
JUN 15 1987
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

ORDER

Upon consideration of plaintiff's motion for reconsideration to show cause why this action should not be dismissed and plaintiff's third affidavit in support of his motion for recusal, and the entire record herein, it is, this 12th day of June, 1987,

ORDERED, that plaintiff's motion for reconsideration is denied; and it is

FURTHER ORDERED, that plaintiff's third affidavit, interpreted by the Court as a motion for reconsideration of plaintiff's motion for recusal, is denied.

Thomas Penfield Jackson
U.S. District Judge

THE UNITED STATES DISTRICT COURT
For the District of Columbia

Case No. 87-0228

BERNARD H. GOLDSTEIN, Plaintiff,
Pro Se, : vs.
ROY A. SCHOTLAND, Receiver
et. al.
* * *

RECEIVED
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CLERK
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

— o —

NOTICE OF APPEAL

— o —

Notice is hereby given that the above named Plaintiff, Bernard H. Goldstein, appeals to the United States Circuit Court of Appeals for the Dictrict of Columbia Circuit from the following judgments and orders in this case by the United States District Court for the District of Columbia: 1. The May 22, 1987 order 1). that Plaintiffs Motion to recuse is denied, 2). that Defendants Motions to dismiss are granted and 3) that the Complaint is dismissed with prejudice. (Filed May 26, 1987, copies attached).

2. TheJune 12, 1987 order 1) that Plaintiffs Motion for Reconsideration (to

show cause) is denied, and 2) that Plaintiffs third affidavit for recusal (based on bias and prejudice, interpreted by the Court as a motion for reconsideration of Plaintiffs Motion for recusal), is denied. (Filed June 15, 1987, copy attached).

This Notic of Appeal is made pursuant to the Federal Rules pf Appellate Procedure (FRAP) including Rules 3 and 4 and includes specifically 1) the Courts ruling concerning lack of subject matter jurisdiction and lack of standing, and also 2) the failure of the Court to grant Plaintiffs June 3, 1987 request by affidavit for recusal based on bias and under 28 USCA 144.

July 20 , 1987

Respectfully submitted,

BERNARD H. GOLDSTEIN,
Attorney Pro Se.
4100 Mass Ave. NW, Apt. 115,
Washington, D. C. 20016
(202) 364-7170.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 87-5297 **September Term, 1987**

Bernard H. Goldstein, Civil Action No. 87-00228

Appellant

v.

Roy A. Schotland, et al.

United States Court of Appeals
For the District of Columbia Circuit

FILED SEP 28 1987

GEORGE A. FISHER
CLERK

ORDER

It appearing that this new case has been filed and docketed, it is

ORDERED that appellant(s) shall submit an original and three copies of the following documents on or before 10-28-87 :

1. Docketing Statement and Appearance Form
2. Copy of the Decision of the District Court
3. Statement of the Issues to be Raised on Appeal
4. Certificate of Counsel (Gen.R. 11(a)(1))
5. A Report certifying that all necessary transcripts, if any, have been ordered, including the date when the transcript was ordered and a statement that satisfactory financial arrangements have been made with the Reporter. A copy of the Report shall be served on each Reporter.

It is FURTHER ORDERED that appellee(s) shall also submit a Certificate of Counsel pursuant to Gen.R. 11(a)(1), and an Entry of Appearance Form, within the same period.

It is FURTHER ORDERED that the parties shall file dispositive motions, if any, on or before 11-12-87. See Gen.R. (7)(i). Any procedural motion which would

* * *

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RE: BERNARD H. GOLDSTEIN 87-5384

WRIT OF MANDATE AND PROHIBITION

PURSUANT TO JURISDICTION AND AUTHORITY CREATED BY 28 USC ø 1651, 28 USC ø 959, RULE 21 OF FRAP AND RULES 6(h) AND 6 (i) OF THIS APPELLATE COURT, BERNARD H. GOLDSTEIN, FILES THIS PETITION TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA TO ISSUE WRITS OF MANDATE AND PROHIBITION TO BE DIRECTED AS INDICATED BELOW.

1. Cases 83-0780 and 83-0940 have been submitted to THE UNITED STATES SUPREME COURT requesting a WRIT OF CERTIORARI. The status hearing scheduled for September 16, 1987, by the District Court on these cases should be cancelled or postponed pending review by the UNITED STATES SUPREME COURT. (Exhibit A) Any further action by the District Court relating to Cases 83-0780 and 83-0940 could be detrimental to the complete filing of an appeal in case no. 87-0228, a related case.

* * *

CONCLUSIONS -30a-

* * *

A. Cancel or postpone the September 16, 1987, District Court status hearing in cases 83-0780 and 83-0940.

B. Order the RECUSAL of Judge Thomas Penfield Jackson in case 87-0228, as well as 83-0780 and 83-0940, for reasons of BIAS AND PREJUDICE.

C. Order title on the BRIL property to be placed in a constructive trust until the Receiver shows cause why the foreclosure sale of February 27, 1985, was allowed to take place without the legal authorization of the or the District Court application of equity and trust law.

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(4)

This WRIT OF MANDATE AND PROHIBITION should be granted so that orderly resolution of these consolidated cases (83-0780, 83-0940 and 87-0228) and appeals can be resolved in an orderly manner by the United States Court of Appeals and the UNITED STATES SUPREME COURT.

SWORN TO BEFORE ME
THIS 2nd DAY OF
SEPTEMBER, 1987

NOTARY PUBLIC

Respectfully submitted,

BERNARD H. GOLDSTEIN, PRO SE

4100 Massachusetts Ave., N.W.
Washington, D.C. 20016
(202) 364-7170

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* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BERNARD H. GOLDSTEIN, Plantiff, v. ROV A.SCHOTLAND, et al., Defendants.	)))))	Civil Action No. 87-0228 Jackson, J.

PLEASE TAKE NOTICE THAT ON THE THIRD AFFIDAVIT OF BERNARD H. GOLDSTEIN, WHICH IS ANNEXED HERETO, PETITIONER RESPECTFULLY REQUESTS THE RECUSAL OF HONORABLE THOMAS PENFIELD JACKSON FROM PRESIDING ANY FURTHER WITH RESPECT TO THE ABOVE CAPTIONED CAUSE OF ACTION BASED ON BIAS AND PREJUDICE OF HONORABLE THOMAS PENFIELD JACKSON.

RESPECTFULLY SUBMITTED,

BERNARD H. GOLDSTEIN

DATED JUNE 3, 1987

* * *

THIRD AFFIDAVIT IN SUPPORT OF RECUSAL OF THOMAS PENFIELD JACKSON, DISTRICT JUDGE, CIVIL ACTION NO. 87-0228, BASED ON BIAS AND PREJUDICE OF JUDGE. (28 USC 144 AND 455)

I.

The manner in which this Court's Order

to DENY RECUSAL of JUDGE THOMAS PENFIELD JACKSON, although supposedly legal, certainly reflects an action that is somewhat unethical. (EXHIBIT I) As of this date, no formal Order denying RECUSAL has been entered. Had Plantiff not discovered the entry of EXHIBIT I, Plantiff would have been denied notification of this Court's denial of request for recusal.

II.

For the reason in Paragraph I and the following reasons, this Third Request in support of RECUSAL OF JUDGE THOMAS PENFIELD JACKSON, Civil Action No. 87-0228, is submitted based on BIAS AND PREJUDICE OF JUDGE.

III.

The Defendant, Roy A. Schotland, was appointed Receiver in Civil Actions 83-0780 and 83-0940 by Judge Jackson in April, 1983, and Defendant remains Receiver as of this date. Civil Action 87-0228 was the result of this Court's judgments in CA 83-0780 and 83-0940.

(2)

IV.

Judge Jackson erroneously caused Judgments of $976,822. and $1,995,642. against Plantiff in

deference to opinion of United States Court of Appeals, March 27, 1987, which ruled that OFFSET of Plantiff's interest in the Plan should be applied in order to determine proper amount of Judgment. This principle was never applied by this Court as is evidenced by EXHIBIT II.

V.

Judge Jackson's personal involvement in the criminal prosecution of the Plantiff was reflected in the following:

On February 26, 1986, the following statements were made by Judge Oliver Gasch at the sentencing of Bernard Goldstein: " I spoke briefly in the elevator with Judge Jackson last night. Elevators don't take very long to go from the fourth floor down to the basement, and he got on at the second floor. We did talk briefly, and he told me nothing had been paid on the Judgments." (The amounts of the judgments were before the United States Court of Appeals at the time Judge Jackson made this remark to Judge Gasch.)

VI.

In a letter of March 16, 1987, from Judge Oliver Gasch to Commissioner Don Lopez, U.S. Parole Commission, Northwest Region, the second paragraph of that letter reveals: " In connection with my review of his (Goldstein) latest # 2255

Motion, I discussed the matter with Judge Thomas P. Jackson of our Court. Judge Jackson was the trial Judge in the civil action brought against Goldstein by the Trustee of the Pension Fund which was mismanaged by Goldstein. Judge Jackson advised me that he had entered judgment against Goldstein in the amount of $1 million, and pursuant to the provisions of the RICO Statute, had trebeled the damages so that, in effect, Goldstein has a judgment against him of $3 million.

Note: Although the facts presented by Judge Gasch may be partially incorrect, the inferences made by Judge Jackson further reflect BIAS AND PREJUDICE toward Goldstein. (The judgments were still before the Court of Appeals at this time)

(3)

VII.

The submission of EXHIBIT III (§ 3541. History of Disqualification Statutes, Wright and Miller, Federal Practice Procedure, Civil [1971]) , states "There is a constitutional right to have a neutral and detached Judge preside over Judicial procedures. (Berger et al., v. United States, 255 US 21)

The following sections of § 3541. related to the facts are presented herewith:

3543 - Par. III, IV, V, VI

3544 - Par. III, IV, V, VI

3545 - Par. I

3549 - Par. III, IV, V, VI

SUMMARY

For the reasons stated in Paragraphs I through VII, there is neither a logical nor legal reason for this Court to deny the Plantiff's request for the RECUSAL OF THOMAS PENFIELD JACKSON, DISTRICT JUDGE, CIVIL CASE 87-0228, based on BIAS AND PREJUDICE THAT NOW EXISTS.

RESPECTFULLY SUBMITTED,

BERNARD H. GOLDSTEIN, PRO SE
4100 Massachusetts Ave., N.W.
Washington, D.C. 20016
(202) 364-7170

SWORN TO BEFORE ME

THIS 4th DAY OF JUNE, 1987

NOTARY PUBLIC

My Commission Expires March 1, 1989

[redacted] Judge JACKSON, J.

CIVIL CASE NO. 87-0228

Bernard H. Goldstein F

VERSUS JURY ACTION

Roy O. Schotland, et al

VOL. 1 OF

FROM TO

DEPOSITIONS	
TRANSCRIPTS	
EXHIBITS	
OTHER	

DATE	COURT CLERK'S MEMORANDUM	JUDGE
2-22-87	Status Call	
	Mod Pltfs to secure	
	denied. Mo Pltfs dep	
	to discovery keptd and	
	granted w/ prej	
	Lee P. Mersch. Jackson	

EXHIBIT